

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 9, 2007 Session

**JAMES DAVID GAMBLE v. SUSAN MARIE GAMBLE**

**Appeal from the Chancery Court for Williamson County  
No. 30919 R. E. Lee Davies, Judge**

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**No. M2006-00797-COA-R3-CV - Filed on May 16, 2007**

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This appeal involves a dispute over spousal support following the dissolution of a 24-year marriage. The Chancery Court for Williamson County granted the wife a divorce on the ground of inappropriate marital conduct and awarded her \$2,500 per month in alimony in futuro. The husband takes issue on this appeal with the trial court's decision to award the wife alimony in futuro rather than rehabilitative alimony and with the amount of the alimony. We have determined that the trial court's decision with regard to spousal support is supported by the record and that the wife is entitled to an additional award for the reasonable and necessary legal expenses she has incurred on appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Karla C. Hewitt, Nashville, Tennessee, for the appellant, James David Gamble.

Russ Heldman, Nashville, Tennessee, and Kamie L. Hefner, Brentwood, Tennessee, for the appellee, Susan Marie Gamble.

**MEMORANDUM OPINION<sup>1</sup>**

**I.**

James David Gamble and Susan Marie Gamble were married in 1982. They have five children, the youngest of which will be eighteen in June 2008. Mr. Gamble is a certified public accountant. Ms. Gamble possesses a baccalaureate degree in art education. Early in the marriage,

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<sup>1</sup>Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

the parties decided that Mrs. Gamble would devote her energies to being a mother and homemaker rather than to pursuing a career outside the home. The parties lived frugally, and Ms. Gamble home-schooled the parties' children.

Mr. Gamble had an inappropriate relationship with another woman during the marriage. The parties separated on September 2, 2004, and Mr. Gamble filed a complaint for divorce the following day. Ms. Gamble counterclaimed for divorce. At the trial on February 14, 2006, the parties stipulated that Ms. Gamble was entitled to a divorce on the ground of inappropriate marital conduct. The evidence also showed that Mr. Gamble was employed full time and was earning approximately \$118,000 per year,<sup>2</sup> and that Ms. Gamble was working as a part-time art teacher with an imputed income of approximately \$15,000 per year.

Following the hearing, the trial court filed a final decree on March 9, 2006, awarding Ms. Gamble a divorce on the ground of inappropriate marital conduct. The trial court also divided the parties' modest marital estate, placed the two minor children in Ms. Gamble's custody and approved her parenting plan, directed Mr. Gamble to pay \$1,334 per month in child support, and awarded Ms. Gamble \$2,500 per month in alimony in futuro. On this appeal, Mr. Gamble takes issue with the trial court's decision to award Ms. Gamble alimony in futuro rather than rehabilitative alimony and with the amount of the alimony award. For her part, Ms. Gamble has requested this court to award her the attorney's fees she has incurred on this appeal.

## II.

Mr. Gamble takes issue in his brief with the trial court's decision to award Ms. Gamble long-term periodic support rather than rehabilitative support and with the amount of the award. During oral argument, Mr. Gamble's lawyer conceded that the trial court did not err by awarding long-term support, and, therefore, the only remaining issue is the amount of the award.

### A.

There are no hard and fast rules for spousal support decisions. *Manis v. Manis*, 49 S.W.3d 295, 304 (Tenn. Ct. App. 2001); *Anderton v. Anderton*, 988 S.W.2d 675, 682 (Tenn. Ct. App. 1998). Trial courts have broad discretion to determine whether spousal support is needed and, if so, its nature, amount, and duration. *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001). Accordingly, appellate courts are generally disinclined to second-guess a trial court's spousal support decision unless it is not supported by the evidence or is contrary to the public policies reflected in the applicable statutes. *Nelson v. Nelson*, 106 S.W.3d 20, 23 (Tenn. Ct. App. 2002); *Brown v. Brown*, 913 S.W.2d 163, 169 (Tenn. Ct. App. 1994). Our role is not to fine tune a trial court's spousal support award, *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at \*9 (Tenn. Ct. App. Sept. 1, 2006) (No Tenn. R. App. P. 11 application filed); *Hartman v. Hartman*, No. E2000-01927-COA-R3-CV, 2001 WL 823188, at \*7 (Tenn. Ct. App. July 20, 2001) (No Tenn. R. App. P. 11 application filed), but rather to determine

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<sup>2</sup>This amount includes his salary and annual bonus.

whether the trial court applied the correct legal standard and reached a decision that is not clearly unreasonable. *Bogan v. Bogan*, 60 S.W.3d 721, 733 (Tenn. 2001).

Tennessee law recognizes several separate classes of spousal support, including long-term periodic spousal support (alimony in futuro), alimony in solido, rehabilitative spousal support, and transitional spousal support. Tenn. Code Ann. § 36-5-121(d)(1) (2005). Long-term periodic spousal support is intended to provide long-term support to an economically disadvantaged spouse who is unable to be rehabilitated. *Burlew v. Burlew*, 40 S.W.3d at 471; *Loria v. Loria*, 952 S.W.2d 836, 838 (Tenn. Ct. App. 1997). It is not, however, a guarantee that the recipient spouse will forever be able to enjoy a lifestyle equal to that of the obligor spouse. *Wright v. Quillen*, 83 S.W.3d 768, 773 (Tenn. Ct. App. 2002). Rehabilitative spousal support is intended to enable an economically disadvantaged spouse to acquire additional education or training that will enable the spouse to achieve and maintain a standard of living comparable to the standard of living that existed during the marriage or to the post-divorce standard of living expected to be available to the other spouse. Tenn. Code Ann. § 36-5-121(e)(1); *see also Robertson v. Robertson*, 76 S.W.3d 337, 340-41 (Tenn. 2002); *Smith v. Smith*, 912 S.W.2d 155, 160 (Tenn. Ct. App. 1995).

Tenn. Code Ann. § 36-5-121(d)(2) reflects a statutory preference favoring rehabilitative spousal support and transitional spousal support over long-term periodic spousal support. *Bratton v. Bratton*, 136 S.W.3d at 605; *Perry v. Perry*, 114 S.W.3d 465, 467 (Tenn. 2003); *Crabtree v. Crabtree*, 16 S.W.3d 356, 358 (Tenn. 2000). However, this statutory preference does not entirely displace the other forms of spousal support when the facts of the case warrant long-term or more open-ended support. *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995).

The purpose of spousal support is to aid the disadvantaged spouse to become and remain self-sufficient and, when economic rehabilitation is not feasible, to mitigate the harsh economic realities of divorce. *Shackleford v. Shackleford*, 611 S.W.2d 598, 601 (Tenn. Ct. App. 1980). While divorced couples often lack sufficient income or assets to enable both of them to retain their pre-divorce standard of living, *Brown v. Brown*, 913 S.W.2d 163, 169-70 (Tenn. Ct. App. 1994), the obligor spouse may be able to provide some “closing in money” to enable the disadvantaged spouse to approach his or her former financial condition. *Aaron v. Aaron*, 909 S.W.2d at 411.

Initial decisions regarding the entitlement to spousal support, as well as the amount and duration of spousal support, hinge on the unique facts of each case and require a careful balancing of all relevant factors, including those identified in Tenn. Code Ann. § 36-5-121(i). *Robertson v. Robertson*, 76 S.W.3d at 338; *Dube v. Dube*, 104 S.W.3d 863, 868 (Tenn. Ct. App. 2002); *Wilder v. Wilder*, 66 S.W.3d 892, 894 (Tenn. Ct. App. 2001). Among these factors, the two that are considered the most important are the disadvantaged spouse’s need and the obligor spouse’s ability to pay. *Robertson v. Robertson*, 76 S.W.3d at 342; *Bogan v. Bogan*, 60 S.W.3d at 730; *Sullivan v. Sullivan*, 107 S.W.3d 507, 510 (Tenn. Ct. App. 2002). Of these two factors, the disadvantaged spouse’s need is the threshold consideration. *Aaron v. Aaron*, 909 S.W.2d at 410; *Watters v. Watters*, 22 S.W.3d 817, 821 (Tenn. Ct. App. 1999).

## B.

We have reviewed the evidence presented to the trial court in light of the factors set forth in Tenn. Code Ann. § 36-5-121(i). Ms. Gamble's age, educational background, and over twenty-year absence from the workforce clearly support the trial court's conclusion that her income will never begin to approach Mr. Gamble's income, even if she eventually finds full-time employment as an art teacher. She has not been awarded capital assets as part of the division of marital property that will meaningfully supplement whatever income she will be able to earn. Thus, Ms. Gamble has a plainly demonstrated need for long-term spousal support.

By the same token, the evidence supports the trial court's conclusion that Mr. Gamble is currently able to pay Ms. Gamble \$2,500 per month in spousal support. His gross annual earnings, including his bonus, exceed \$115,000. In addition, his child support obligation will end in mid-2008 when the parties' youngest child reaches the age of majority. Because the spousal support award will remain subject to modification, Mr. Gamble will always be able to seek a reduction in the amount of his support should his income decrease significantly or should Ms. Gamble's income increase significantly above her imputed income. Accordingly, based on this record, we affirm the trial court's decision to require Mr. Gamble to pay Ms. Gamble \$2,500 per month in long-term spousal support.

## III.

Ms. Gamble has also requested this court to award her the legal fees and expenses she has incurred on this appeal. In domestic relations cases, the courts have the authority to make an additional award to economically disadvantaged spouses to enable them to defray all or part of their legal expenses. *Elliott v. Elliott*, 149 S.W.3d 77, 88 (Tenn. Ct. App. 2004); *Koja v. Koja*, 42 S.W.3d 94, 98 (Tenn. Ct. App. 2000). Like the trial courts, appellate courts have the authority to award attorney's fees to a disadvantaged spouse who has prevailed on appeal. *Butler v. Butler*, 680 S.W.2d 467, 471 (Tenn. Ct. App. 1984). Once an appellate court determines that an additional award for attorney's fees is appropriate, the proper procedure is to remand to enable the trial court to determine the amount of attorney's fees that should be awarded. *Folk v. Folk*, 210 Tenn. 367, 378-79, 357 S.W.2d 828, 828-29 (1962).

Ms. Gamble is plainly economically disadvantaged in comparison to Mr. Gamble and does not have the funds on hand to defray her appellate legal expenses. She has prevailed on appeal, and if she is required to pay her attorney's fees on appeal, she will be required to liquidate assets that she received as part of the division of the marital estate. In light of these facts, we have determined that she is entitled to an additional award to enable her to pay the attorney's fees she has incurred on this appeal. Therefore, on remand, the trial court is directed to conduct further proceedings to determine the amount of this award.

## IV.

We affirm the trial court's decision to award Ms. Gamble \$2,500 per month in long-term spousal support and remand the case to the trial court for the purpose of determining the amount of

attorney's fees that Ms. Gamble should be awarded on appeal and entering an order requiring Mr. Gamble to pay these fees and for any other proceedings consistent with this opinion that may be required. We also tax the costs of this appeal to James David Gamble and his surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.